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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,321	01/15/2002	Stephen P. Dretler	6017-01-1	6230
7590 01/25/2005 McCormick, Paulding & Huber City Place II 185 Asylum Street Hartford, CT 06103-3402			EXAMINER BAXTER, JESSICA R	
			ART UNIT 3731	PAPER NUMBER

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/050,321

Applicant(s)

DRETHER ET AL.

Examiner

Jessica R Baxter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2004 and 15 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5, 6, 8-11, 13, 16 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 7, 12, 14, 15, 17-19 and 21-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 02152002.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 3, 5, 6, 8-11, 13 and 16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on November 3, 2004.
2. Applicant's election with traverse of the species of FIG. 1 in the reply filed on November 3, 2004 is acknowledged. Applicant has indicated that claims 1-7, 12, 14, 15, 17-19 and 21-24 all read on the elected species. However, claims 3, 5 and 6 read on the species of FIG. 4 and claims 9-11 read on the species of FIG. 3. Therefore, claims 3, 5, 6, and 9-11 are all withdrawn from consideration.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,360,440 to Andersen

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A piezo-electric in vivo insertable device comprising: a) a piezo-electric material (22) in a tubular shape having an interior surface and an exterior surface; b) at least one inside electrode (21) on said interior surface of said piezo-electric material; c) at least one outside electrode (23) on said exterior surface of said piezoelectric material; wherein said at least one inside electrode covers said interior surface of said piezo-electric material; wherein said at least one outside electrode covers said exterior surface of said piezo-electric material (FIG. 4).

5. Claims 1, 2, 4, 7, 12, 14, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,967,986 to Cimochoowski et al.

A piezo-electric in vivo insertable device comprising: a) a piezo-electric material (198) in a tubular shape having an interior surface and an exterior surface wherein the piezo-electric material is radially polarized (Column 20 lines 7-14); b) at least one inside electrode on said interior surface of said piezo-electric material; c) at least one outside (196) electrode on said exterior surface of said piezoelectric material; wherein said at least one inside electrode (200) covers said interior surface of said piezo-electric material; wherein said at least one outside electrode covers said exterior surface of said piezo-electric material (FIG. 17).

6. Claims 1, 2, 4, 7, 15, 17, 18, 19, 21, 22, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,725,494 to Briskin.

A piezo-electric in vivo insertable device comprising: a) a piezo-electric material (52) in a tubular shape having an interior surface and an exterior surface; b) at least one inside electrode (56) on said interior surface of said piezo-electric material; c) at least one outside electrode (54) on said exterior surface of said piezoelectric material; wherein said at least one

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inside electrode covers said interior surface of said piezo-electric material; wherein said at least one outside electrode covers said exterior surface of said piezo-electric material (FIG.

4). The device of Briskin may be used by placing it a desired location, vibrating the device and then removing the device (Column 4 lines 12-20).

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,078,736 to Behl

U.S. Patent No. 5,899,917 to Edwards et al.

U.S. Patent No. 6,014,589 to Farley et al.

U.S. Patent No. 6,077,298 to Tu et al.

U.S. Patent No. 6,231,516 to Keilman et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica R Baxter  
Examiner  
Art Unit 3731

  
jrb

  
ANH TUAN T. NGUYEN  
PRIMARY EXAMINER

1/24/05